G. R. S. IX-5]

Previous references.

1898-99
~~191~~
(G. F.)

File No. 46-98

Serial Nos. 1-7

Later references.

P:44
EK

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-7

Majors. ~~Part~~ B for Jany 99

SUBJECT.

Refund bill in favour of one Kesaviah of Mysore.

Countermarked

W D 88—GPB—50,000—24-7-16

1896

FC No 51

Section
File No 1
Serial No

Memo

Petition dated the 13th July, 1898, from one Kesavaiya residing in Lashkar Mohalla, Mysore City, appealing against the order of the Dy Comm^r of the Mysore District, No 630 dated the 23rd April, 1898, declining to remit any portion of the amount of penalty levied from him under orders of the Subjudge, Mysore, in O.S. No 20 of 1895-96 on his file.

The petitioner (Kesavaiya) and another by name Muthumani Pillay of the Civil and Military Station, Bangalore, arranged between themselves to trade in oranges, each contributing a sum of Rs: 1000/. for the Capital

Capital, and accordingly, on the 22nd September, 1894, an instrument of part-nership was executed on a stamp paper of Rs: 10/-. by Muthusami Pillay in favor of the petitioner. Among other things, it is stated in the deed that each party should have 4 men of his to assist in Carrying on the trade and that the names of these apistants should be entered in the account book of the firm.

An account book was opened and on the opening page thereof the following agreement is written:—

Account book dated 22-9-94 of receipts and expenditure of the trade in oranges, to be Carried on jointly by Kesavaya of

of Lashkar Mohalla
Mysore City, Bangal
Muttoomani Pilla
Chaboomeah Saha
Hayath Khan Saha
Mahomed Gows Sab.
Sheik Adem Sab,
Mohadeen Khan
Sab, Hayath Sab,
Mahomed Hussai
alias Manni Sabi Sa
-mail Sab. A deed
partnership has been
executed by Muttoo
Manipillay in favo
of Kesaveiya on a
stamp paper of Rs: 10
on the 22nd instant
The original deed is
with Muttoomani
Pillay. What has be
stated in that agreem
deed is that Kesavai
should Contribute O
thousand Rs: towar
the Capital, and Mutt
mani Pillay one thou
It has been settled
Out of the profit
that

of Lashkar Mohalla
Mysore City, Bangalore
Muttoomani Pillay,
Chaboomeah Sahaib,
Hayatth Khan Sahaib,
Mahomed Gows Sab.,
Sheik Adum Sab,
Mohadeen Khan
Sab, Hayath Sab,
Mahomed Hussain
alias Manni Sabi Sa.
-mail Sab. A deed of
partnership has been
executed by Muttoo
Manipillay in favor
of Kesaveiya on a
stamp paper of Rs 10/
on the 22nd instant
The original deed is
with Muttoomani
Pillay. What has been
stated in that agreement
deed is that Kesaveiya
should Contribute one
thousand Rs: towards
the Capital, and mutto
mani Pillay one thousand
It has been settled
Out of the profit
that

that remains after deducting Contingencies, interest and establishment charges &c. One anna share is to be given to God, 7½ annas share to Muthumani Pillay Company and the remaining 7½ annas share to Kesavaiya Company. We have agreed to share thus both the loss and gain and have attested our names hereunder

The petitioner states in his petition that he produced the said account-book and the deed of partnership in O.S. No 20 of 1895-96 on the file of the Subjudge, Mysore. But what this Case is about, he does not say. The Subjude (Mr. S. R. Subba raya Iyer) having seen the aforesaid agreement written

in

GOVERNMENT OF MYSORE

in the account book
of the firm, thought
that it ought to have
been drawn up on a
properly stamped paper
as per article 32, Schedule
1 of the Stamp Act, and
levied from the petitioner
Rs: 10/- for stamp duty
together with a penalty
of Rs: 100/- being 10 times
the duty required,
total Rs: 110/-.

8/3/98
under section
36

Thereafter Kesavaiya
applied to the Dy Comm^r
of Mysore, to set aside
the order of the Sub Judge,
and under Section 36
of the Stamp Act, to
refund the penalty
amount which had
been recovered from
him, on the ground
that a separate deed
of partnership had
been

been engrossed on a sufficiently stamped paper.

The Dy Comm^r, after perusing the papers furnished by the petr passed the following order: —

No 630 of 23-4-98

"The deed which has been written on a stamp paper is one executed in your favor by Muthoomani Pillay alone. By this, the partnership deed, which has been written in the account book and signed by all the partners Concerned, and which is subject to stamp duty, cannot be exempted from such duty. You are therefore hereby informed that there appears to be no reason to refund any

any portion of the penalty amount which has been recovered from you by the Sub Judge's Court."

The present appeal is against the above order

The appellant argues that under section 6 of the Stamp Act, the deed contained in the account book is subject to a stamp duty of only one rupee with a penalty of Rs: 10/- (the total amount to be levied from him being Rs: 11/-) and prays that the amount collected from him in excess may be refunded to him

The memorandum should be treated as an application under section 42

That section applies only to sales, leases, mortgages & settlements & not to accounts as in this case which is an acknowledgment of liability

It is true that the entries in the account book are not chargeable with any stamp duty & also that the case of other parties

8/8/98

Subd to Secty
The Deputy Comr has refused, under s. 36 of the Stamp Act, to

refund any portion of the penalty. Under S. 42 the Chief Controlling Revenue Authority has power to refund such penalty wholly or in part, but the question is whether the Sub Judge was wrong in holding that the unstamped document in the Account book was a ~~the~~ separate one in itself and liable to payment of full Stamp and not covered within the provision of Sec: 6 of the Stamp Act.

Section 6 Cases noted below

12/8/98

The deed of partnership has been recently executed. It distinctly contemplates 2 sets of partners viz (1) Kesavaya & 4 of his men, & (2) Muthumani Pillai & 4 of his men. It goes on to provide that out of the net profits Kesavaya & his men shall pay Rs 40 and Muthumani Pillai & his men Rs 60

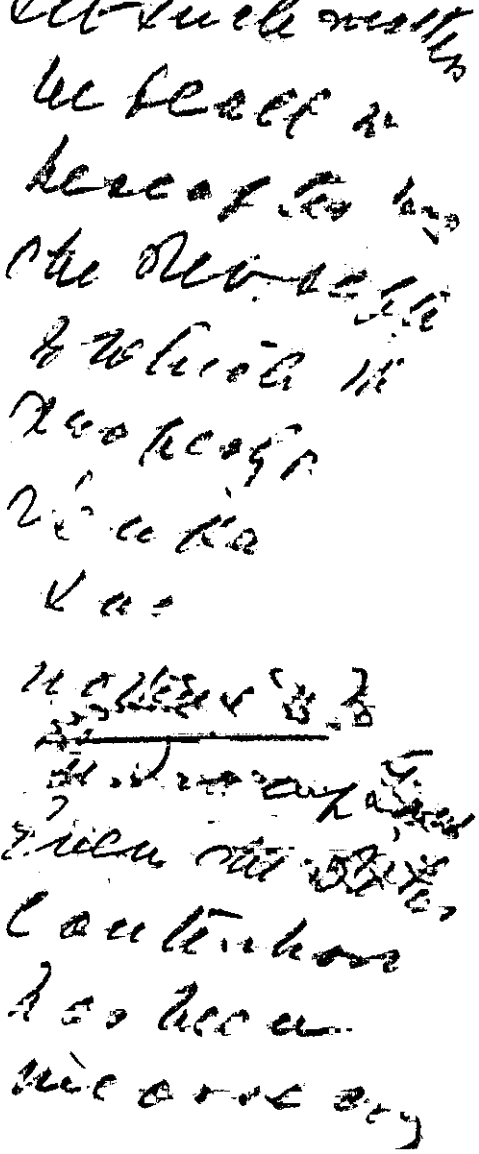
half. It also provides for the retention in the accounts of both the names of Kesavanji Nair & Muthiman Pillai alone. The entry in the Account Book made on the same date merely refers to the Promissory contained in the Instrument of Partnership. We are told that unlike the Cash Instrument the entry bears the names & signatures of all the men concerned does not seem to connect the entry with a separate Instrument of Partnership. I think the Jury are wrong. Tho' the Entry cannot answer the purpose

Judge view yet the
case need not go
to call for the
exercise by him of the
power vested in him
by/under Section 36 of
the Stamp Act. As
he declined to do so
this application has
been made to the
Chief Controlling Revenue
Authority (Govt)
under Section
43. I am of opinion
that the whole of the
penalty may be ordered
to be refunded. This
can be done even
in cases in which
the levy of penalty
has been correctly
made. Another alternative & perhaps a more satisfactory
is to state a case for
the decision of the High
Court under Section 46.

Submitted to Hon'ble Member
12/8/98

Yes this may be done
14/8/98
Hon'ble Member

On a reference made, the Chief Court has decided that the entry in the Account Book is not liable to Stamp Duty. (vide No. 2224 of 28th September 1894, from the Registrar, Chief Court, Mysore.).



12/8/98

Regulator

Please take a note
of the transfer of
the Spa Branch
& transfer it and
the Tele to New Branch

12/8/98

Spa Rev Branch

Please see the above
remarks of the
Auditors

12/8/98

Correct. 2
Note for
future Auditors
12/8/98

Levy of Duty & penalty under the provisions of the Indian Stamps Act.

Statement of the Case in point:—
made under Sec. 46 of the Ind. St. Act.

One Kesavaiya residing in Lashkar Mohalla, Mysore City and another Muthu-swami Pillay of the Civil and Military Station, Bangalore, arranged between themselves to trade in Ginjies, each Contributing a Sum of Rs 1000/- towards the Capital, and accordingly on the 22nd September 1894 an instrument of partnership was executed on a Stamp paper of Rs 10/- by Muthuswami Pillay in favor of Kesavaiya. Among other things, it is stated in the deed that each party should have 4 men of his to assist in Carrying on the trade and that the names of these

these assistants should be
entered in the account book
of the firm An account
book was accordingly
opened and on the opening
page thereof the following
~~extract~~ extract was written

Account book dated
22-9-94 of receipts and
expenditure of the trade
in oranges to be carried
on jointly by Kesavaiya
of Lashkar Mohalla, Mysore
City Bangalore Meesthree
-Marie Pillay, Shabar
Miya Saheb, Hayath
Khan Saheb Mahomed
Yousuf Saheb, Sheik Adam
Saheb Meehadeen Khan
Sab Hayath Sab. Mahamad
ussain alias Mimmi Sab
ud Ismail Sab A deed
Partnership has been
executed by Muthumane
Mooy in favor of Kesa
vaya on a Stamp paper of

of Rs 10/- on the 22nd instant
The original deed is with
Meathoomani Pillay.
What has been stated in
that agreement deed is
that Kesavaraya should
contribute 1000 Rupees
towards the capital, and
Meathoomani Pillay 1000.
It has been settled to
cast of the profit that
remains after deducting
contingencies interest and
establishment Charges &c,
one anna share is to be
given to God, 7½ annas
share to Meathoomani
Pillay Company and 7½
annas share to Kesavaya
Company. We have agreed
to share thus both the
loss and gain and have
attested our names here-
under"

Kesavaya produced
the above mentioned account
book

book in a Case O. S. No 20 of 1895-96 on the file of the Sub judge, Mysore. The Sub-judge (Mr. S. R. Subraiya Iyer) having seen the aforesaid agreement written in the account book of the firm, thought that it ought to have been drawn upon a properly Stamped paper as per Article 32, Schedule 1 of the Stamp Act, and levied from the petitioner Rs 10/- as Stamp duty & a penalty of Rs 100/- being 10 times the duty required, total 110 Rupees.

Thereupon, ~~under Section 36 of the Stamp Act~~, Kesavaya applied to the Dy. Comr. of Mysore ~~to set aside the order of the Sub judge~~ and under Sec. 36 of the Stamp Act, for a refund of the penalty ~~amount~~ wh. had been recovered from him, on the ground that a

as separate deed of partner-ship has been engrossed on a sufficiently Stamped paper

The Deputy Comr. after perusing the papers furnished by the petitioner Kesavanya passed the following order

" The deed which has been written on a stamp paper is one executed in your favor by Muttiumaru Pillay alone By this the partnership deed which has been written in the account book and signed by all the partners concerned and which is subject to stamp duty, cannot be exempted from such duty. You are therefore hereby informed that there appears to be no reason to refund any portion of the penalty amount which has been recovered

recovered from you by
the Subjudges Court"

Kesavanya has now tabled
~~appeals~~ to Government under
Rule 42 of the Del-
against the above order.

The appellant argues 1st
that the entry in the account
book is not chargeable
with any stamp duty
and 2nd that even if
otherwise, ~~the deed contain-~~
~~-ed in the account book~~
is subject to a stamp
duty of only one rupee
with a penalty of Rs 10
under Sec. 6 of the Stamp
Act, - and prays for the
refund of the amount levied
~~collected~~ from them.

It may be
Government observed
that the deed of partnership
has been properly stamped
as ~~stamp~~ contemplated
2 sets of partners, viz
(1) Kesavanya & 4 of his men
& (2) Muthuswami Pillay & 4.

of his men It goes on to provide that out of the net profit Kesavaya and his men should get one half, and Muthumani Pillé and his men, the other half. It also provides for the insertion in the accounts of the names of both Kesavayas men and Muthumani Pillés men. The entry in the account book made on the same date merely gives effect to the provisions contained in the Instrument of Partnership The mere fact that neither the said Instrument the entry bears the names and signatures of all the men Concerned does not seem to convert the entry into a Deposit Instrument of Partnership &c As at present advised Government are of opinion that the Entry of Deposit & penalty

may be
Mutd.

already by the Sub Registrar
was wrong. This being
to the point for the decision
of the Chief Court as
whether the entry made
in the account book in
question is liable to any stamp
duty ~~or otherwise~~ duty.

Not the entry was
not made by any
executant -
They were known
to make a ruling
on the subject
from the Chief
Court.

Obviously
It is clear that this
is not one of the documents
mentioned in Section 6
which therefore does not
require registration -

Secretary.

19/8/98

22/8/98

The matter having been
referred to the Judges of
the Chief Court, the Regis-
trar submits their opinion * which is to the following
effect:-

* Vide his No 2224/74 dated 28-9-98.

The entry made in
the account book does not
add to or vary the terms
of the instrument of part-
nership. It was agreed
between

between Kesavaya and
Muthoomani Pillai —
that they were to carry
on the business with the
assistance of eight persons.
The entry contains the —
names of the assistants
and gives effect to the
contract of partnership.
It is not liable to Stamp
duty."

VR
19/6/68

TO 104

S 47 applies to a case where no reference has been made under Ch V

S 48 of the Inland Revenue Stamps Act lays down that the Revenue authority should on receipt of the Court decree of the case communicate its ruling

The ruling is that the entry in question is not liable to stamp duty or any other mode

The levy of duty & penalty was illegal

It follows, therefore, that effect could only be given to the decision of the CCE & direction

The refund of duty & penalty illegally levied

Thus the Revenue Authority is quite competent to do under the ruling of the CCE - Para 2 of draft order may accordingly be issued

5.11.98

Submitted

The Commissioner desires me to return this to the Office for submission to the 1st Commissioner to whom the "Stamps" Dept. has since been transferred

R. N
4th Nov 98

Not a matter for the Chief Controller's Revenue authority As however the Revenue Returns must be dealt with in the Stamp Office it is ruled for the 4th Nov 98 270

10/16.7.98 (Misc 2.1)

1898 714 26-7-98.

No. 145

Name of Petitioner Kesaviah

Village Lashkarmohalla

Taluk

District

Section Disposal

File No

Serial No

Date of Arzi 13-7-98

Date of Receipt 16.7-98

Date of Disposal

No. of Enclosure 4

ABSTRACT

Appeal against the following order of the Dy Comr, Mysore Dist (Rel-630, 24/25-4-98)

You urge that while the Deed of Partnership between you and Muttannah Pillay of 22-9-94 has been drawn up on a duly stamped paper and while the Firmname of the Accounts book has been written in accordance with that Deed the subsequent took the Firmname for

8/98

(1) Two rubber stamps affixed - Stamp Duty

(2) The order of the Dy Comr complained of is dy 23-4-98 & the time

Application for refund of stamp penalty Rs 110 levied on an entry in account book in connection with a deed of partnership separately executed.

23/7/98 (Let a copy of the stamps sell, the rules thereunder & the ruling of the Chief Court on differences how sort are put up in the Rel Branch)

To Secy Dept

dy 23/7/98.

20/7

The case may be disposed of by the Secy Dept as noted above

(23/7/98)

vide Note

4V Hand Le

Sir

Office note

Perhaps foreorders.

AM 6/8/98

Submitted to Secy with an Office Note. 7/8/98

different Deed of Partnership
and recovered from you a penalty
of Rs 110/-; and pray that
the said penalty may be
refunded. The stamp-paper Deed
is written in your name by
only Muthumani Pillay, whereas
the entry of this in the Account-book
which has been subjected to the
stamp-duty ~~penalty~~ is a Deed which has been
signed by all the partners.
Therefore the penalty received
by the subjects, or any portion
thereof cannot be reasonably
refunded

Petr. states that one of the conditions
of the Deed on 10Rs Stamped-paper was
that each of the partners should take
4 others to help them, and that their names
should be entered in the Account book
that accordingly all the names
of their helpers were entered in the "Schedule" of the
Account-book where a copy of the Deed
was made; that since the Deed of
Partnership has been executed on a sufficiently
Stamped-paper, the Subjects is wrong in having
levied a penalty on the copy of it; that under
Section 6 of Stamp Act, a One-Rupee
paper would have been enough - if a
Stamped-paper were at all necessary - this
being only an instrument for
example in

(vide marked portion enclosure.)

completing the transaction, the principal one having been written on a sufficiently stamped paper; that the penalty which ought, hence, to have been levied on the Account-book ~~would~~ was Rs 11/- ; and that the Dy Com's order ~~passed~~ on his application for remission of the penalty under sec. 36. of the Stamp Act was passed without hearing him or giving any attention to the contents of the application

Prays that the penalty recovered from him may be ordered to be refunded.

Enc:
1. Order appealed against
2. Decree-copy.
3. Copy of the 1st page of Account-book
4. Copy of Deed of Partnership.

22/7/98.

Bg Post Registered 15-7-98

DEPARTMENT
NO. 1450
DATE 16-7-98

Two rupees stamp affixed

To.

The Secretary to the Govt. of
His Highness the Maha Raja of
Mysore
Revenue and General Department
Bangalore.

Application of Kesaviah, Residing in Lakshar Mohalla, Mysore.

The applicant begs to state as follows:-

That he and one Muthumani Pillay of Bangalore entered into an agreement to trade as partners and executed a deed of partnership on a 10 Rupees stamp paper, stating therein all the conditions under which they ought to trade as partners. One of the conditions therein mentioned was that the members should each take 4 members to help them and that their names should be entered in the account book.

In opening the account book, the partners

Guruvaiah

Gumasta Narasappiah made a copy of of the above mentioned partnership deed mentioning them in the names of the 8 members whom the petitioner and his partner chose to help them.

The petitioner filed a suit in the Mysore Sub-judge's court in OS No: 20 of 1895-96 and produced his account book. The deed of of partnership has also been produced in the case.

The Sub-judge without taking into consideration the existence of the partnership deed, Compelled the petitioner to pay a penalty of Rs 110 on the Copy of the deed written on the 1st page of the account book.

Since the partnership deed has been executed on a Sufficient stamp paper, the Sub-judge is wrong in having levied a penalty on the Copy of it written in the account book.

Even if it is thought that it ought to have been written on a stamp paper, A paper of one Rupee would

would have been quite sufficient under section 6 of the stamp act, this being only one of the instruments for completing the transaction, and the principal instrument having been written on a sufficient stamp paper. So the penalty which ought to have been levied on the book would would be only Rs 11.

The petitioner submitted an application to the Dy Commissioner on 8/9. 3-98. mentioning all the above facts and asking for a refund of the penalty amount under section 36 of the Stamp Act.

The Dy Commissioner of Mysore without hearing him and giving any heed to what was Contained in his application, gave a reply to the effect that the Subjudge was right in having levied the penalty

The petitioner humbly Requests that Your Honour will kindly Consider the above facts and order for the refund of the penalty amount taken

taken from him ——

I have herewith enclosed, a Copy of the partnership deed, a Copy of the 1st page of the account book on which the penalty has been levied, and the order of the Dy Commissioner

Dated. 13th July 1898.

Yours faithfully

Stamp Duties

No.

Serial No.

To.

The Registrar
Chief Court of Mysore

Dated 29/8/98.
No. 1598 for 5
" R. 653

Sir,

In forwarding herewith the accompanying Statement regarding the levy of Stamp duty and penalty on ~~a copy of a~~ certain entries relating to ~~deed of~~ partnership ~~entered~~ made in the account book of ~~the~~ a certain firm, I am directed to request that you will be good enough to place it before the Chief Court, in the matter and obtain a ruling thereon.

2. The amount of the duty and penalty I have to request that you will be good enough to remit the same to Government.

I have etc

29/8/98
Secretary

Revenue Section

Forwarded for favour of reference

19/8/98.

21/8/98

(General Serial No. 30.)

REVENUE DEPARTMENT
2395
OCT 1898
R 1384
SECRETARIAT'S OFFICE

189 8

From The Registrar of the Chief Court of Mysore

To The Secretary to the Govt: of Mysore Rev: & Genl: Depttts.

Dated 28th
Despatched 30th } September 98.
Received

Enclosures No. 4

General No. 2224
No. 74

With reference to this Nos: 1598 / R. 653 & 29th Augt 98, forwards copy of opinion of the Judges of the Chief Court in Referred cases Nos: 2 of 1898-99.

G.N
Mr Mitchell
Dept. II
Rev 1/10/98

Read 8/10/98. Drafted & subd 13/10/98

Central Jail Press, Bangalore.—13-9-94.—2,902.

24/74 Enc: 4.

Bangalore
25th September 1898.

From

The Registrar of the
Chief Court of Mysore.
Bangalore.

Section
File No
Subject No

To

The Secretary to the
Government of Mysore,
Revenue and General Departments

Sir,

With reference to your No. 1598/R 653 dated 29th August last, I have the honor to forward, herewith, copy of opinion of the Judges of the Chief Court of Mysore in Referred Case No 2 of 1898-99.

*Enclosures returned.

I have the honor to be,
Sir,
Your Most Obedient Servant

Registrar.

Enc

In the Chief Court of Mysore at Bangalore.
Wednesday the 21st day of September 1898

Present

Hon'ble Justice A. Ramachendra Iyar, Offg Chief Judge
Hon'ble Justice C. Menacharya, Judge.
Hon'ble Justice T. Tarahari Row, Offg. Judge

Referred case No 2 of 1898-99 from the Secretary to the Government of Mysore, in C. S. No. 20 of 1895-96 on the file of the Sub Judge of Mysore.

+No 1598 dated 29th August 1898.
R 653

Kesavayya ... Petitioner.

Muthoomani Pillay. ... Counter Petitioner.

This case coming on for disposal on Monday the 5th day of September 1898, Upon perusing the case, as stated by the Secretary to the Government of Mysore, the Court pronounced the following

Opinion.

The entry made in the account book does not add to or vary the terms of the instrument of partnership. It

was

was agreed between Kesavaya and Muthoomani Pillai that they were to carry on the business with the assistance of eight persons. The entry contains the names of the Assistants and refers to the Contract of partnership. It is not liable to stamp duty.

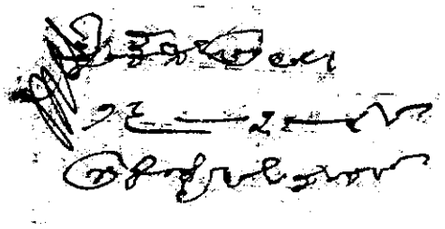
A true copy.

Rajasabhai Mudaliar

Registrar

Chief Clerk

OS No 20 of 95-96



(illegible)

(Initialled) S.G.
14/12/97

Sd/- G.R. Subbaraya Setty
Sub Judge

Copy

Sheristadar

Copy applied for by office on 26-3-98
Copy received on ——— 28-3-98
Copy delivered on ——— 29-3-98

Words 20
Copying fee " -1-
Comparing fee " -1-
" -1-2

OS 20 of 95-96

Ex-A

(Initialled) S.R.S

Submitted

21-10-97

Writing fee. — 2 —
Copying fee. — 2 —
Comparing fee. — 4 —
1-2-4

Copy

Sheristadar

Copy applied for by petition 26-3-98
Copy ready on — 28-3-98
Copy delivered on — 29-3-98

O.S. No. 920 of 95-6

Exhibit III.

(Initialled) S.R.S
Subramanya Iyer
29-8-95

Pd. by Mr. Subramanya Iyer
Defendant's advocate.

(10 annas)

Pages 142

Mss

(ਅਨੁਵਾਦਕ ਦਾ ਨੋਟ)

22-94

ਇਹ ਲੇਖ ਮੂਲ ਰੂਪ ਵਿਚ ਅੰਗਰੇਜ਼ੀ ਵਿਚ ਲਿਖਿਆ ਗਿਆ ਸੀ ਅਤੇ ਇਸ ਦਾ ਪੰਜਾਬੀ ਅਨੁਵਾਦ ਸੰਪਾਦਕ ਦੀ ਬੇਨਤੀ ਤੇ ਕੀਤਾ ਗਿਆ ਹੈ। ਅਨੁਵਾਦ ਕਰਦੇ ਸਮੇਂ ਇਸ ਗੱਲ ਦਾ ਧਿਆਨ ਰੱਖਿਆ ਗਿਆ ਹੈ ਕਿ ਲੇਖ ਦੇ ਮੂਲ ਭਾਵ ਵਿਚ ਕੋਈ ਤਬਦੀਲੀ ਨਾ ਆਵੇ। ਇਸ ਲਈ ਕਈ ਥਾਵਾਂ ਤੇ ਅਨੁਵਾਦ ਸ਼ਾਬਦਿਕ ਨਾ ਹੋ ਕੇ ਭਾਵਾਰਥਕ ਹੋ ਗਿਆ ਹੈ। ਇਸ ਲੇਖ ਵਿਚ ਕਈ ਥਾਵਾਂ ਤੇ ਲੇਖਕ ਨੇ ਆਪਣੇ ਵਿਚਾਰ ਪੇਸ਼ ਕੀਤੇ ਹਨ ਜਿਨ੍ਹਾਂ ਨਾਲ ਸੰਪਾਦਕ ਦਾ ਸਹਿਮਤ ਹੋਣਾ ਜ਼ਰੂਰੀ ਨਹੀਂ ਹੈ।

ਸਾਰੇ ਸਾਰੇ ਸਾਰੇ

Words 310
Copying fee :- 4-
Comparing fee :- 8-
4-8-98

Copy

Copy supplied by pleader on 26-3-98
Copy received on 28-3-98
Copy delivered on 29-3-98

Mis 1331

18 1898

OFFICE OF THE DEWAN OF MYSORE 3671 19 OCT. 98

No. 758

Name of Petitioner Keshavaya
Lushkar Mohalla Mysore.

Village

Section

Taluk / Division No. Mysore.

District / Serial No

Date of Arzi 30 9 98

Date of Receipt 3. 10. 98

Date of Disposal

No. of Enclosure Nil

ABSTRACT

Reminder to his petition dated 13.7.98 appealing against the Deputy Commissioner's order regarding the production of a certain book.

Prays that on a perusal of the said petition orders may be passed for the refund of the penalty amount taken from him.

A. S. G.
8. 10. 98.

Re Reference
19/10/98 Asstt.
145 98 El Deptt. 23-7-98
Rd. 3-10-98
To Genl. Department Explanation
17. 10. 98 Asst Deptt
Submit The previous petition was ordered by Secy to be transferred to Revenue Department and done so accordingly on 12/8/98-
Rec'd 1/11/98
Transferred to Rev Dept 2/11/98
Rec'd 1
3/11/98
R 1384 of 98-99:
Report
17/12 The Case Worker disposed

By post - registered
3-10-98.

758R

DATE 3-10-98

The Secretary to the Government
of His Highness the
Maharaja of Mysore

The petitioner Ramaiah, son of Thimmiah residing at Hakalla Arkalgud, Mysore, begs to state as follows. —

The petitioner submitted an application to this Honourable Court on 13-7-98, against the order of the Deputy Commissioner, Mysore District, for confirming the order of the Sub-Judge at Mysore in O.S. No. 20 of 1895-96 for having levied a penalty on account book produced by the petitioner

Since then the petitioner did not receive any order from Your Honourable Court.

The petitioner therefore begs that Your Honour shall kindly consider all the facts mentioned in the said application dated 13th July 1898 and order for the refund of the penalty amount taken from him

Dt 30th September 1898

Your most obedient & faithful Servant

Mysore

Draft for reply

S

Read:-

Section
No
Serial No

Petition dated 13th July 1898 Registered No. 145 from Kesavaiya residing in Lushkar Mohalla, Allypore, praying for orders for the refund of the Stamp Duty and penalty levied from him by the Sub Judge of Allypore, on the first entry of an account book relating to a trade which he and one Muthumani Pillé agreed to carry on as partners with the help of certain men of their own on each side, and urging that the entry referred to is not a separate agreement as held by the Sub Judge and the Dy Commr. but is only a preamble containing a brief statement of the terms of the deed of partnership, which has been written on a ~~Sufficient~~ Stamp paper (of sufficient value), and the names of the persons whom each partner wished to take for his help.

Noted & Receipt & Dr
1-11-98

Also:- This office No 1598/2653 dated 29th August 1898 to the Registrar

of the Chief Court forwarding the following Statement of the case for the decision of the Chief Court as to whether the entry in the account book is liable to any and what Stamp duty.

(Here copy the Statement in full).

Letter No. 2224/74 dated 28th Septr. 1898 from the Registrar of the Chief Court forwarding copy of the following Opinion of the Judges of the Chief Court.

"The entry made in the "account book does not add to "or vary the terms of the in- "strument of partnership. "It was agreed between Desa- "raiya and Muthoomani Pillé "that they were to carry on "the business with the assist- "ance of eight persons. The "entry contains the names "of the assistants and gives "effect to the contract of "partnership. It is not liable

to Stamp duty.

Order thereon: No 3281-9
R. 1274
8/10/98

Ordered that the ruling of the Chief Court above quoted be communicated to the Supdt. of Stamps and the Dy Commrs of Mysore Districts for information and guidance.

2. The Dy Commr of Mysore will adopt measures for refunding to the party concerned the Stamp duty and penalty illegally levied by the Sub Judge in the instant case.

Print

1-11-98
Secretary.

31/10/98

Submitted
The deed of Partnership has been executed on a stamp of Rs 10/-
Rs 10/-

Accountant books a Duty of Rs 10/-
& a penalty of Rs 100 were
recovered by the Sub Judge.
The Chief Court have held
that the Ruling is not dead by
Stamp Act. The Act does
not provide for
a case of this
kind. If
the duty was
levied be
not refunded
it would be
keeping duty
collected
above the
Chief Court
ruling

To.
The Dy Commr, Mysore Dt
Supdt of Stamps
Dy Commrs of other Distts

18/11

& vide
Do issue in manuscript
to the Dy Commr, Mysore.

READ :—

Petition dated 13th July 1898, Registered No 145, from Kesavaiya, residing in Lashkarmohalla Mysore, praying for orders for the refund of the stamp duty and penalty levied from him by the Sub-Judge of Mysore, on the first entry of an account book relating to a trade which he and one Muthumani Pille agreed to carry on as partners with the help of certain men of their own on each side, and urging that the entry referred to is not a separate agreement as held by the Sub-Judge and the Deputy Commissioner but is only a preamble containing a brief statement of the terms of the deed of partnership, which has been written on a stamp paper of sufficient value, and the names of the persons whom each partner wished to take for his help.

ALSO :—

This office No. 1598—R. 653, dated 29th August 1898, to the Registrar of the Chief Court, forwarding the following statement of the case for the decision of the Chief Court as to whether the entry in the account book is liable to any, and what stamp duty.

STATEMENT.

One, Kesavaiya residing in Lashkarmohalla, Mysore City, and another, Muthumani Pille of the Civil and Military Station, Bangalore, arranged between themselves to trade in oranges, each contributing a sum of Rs. 1,000, towards the capital, and accordingly on the 22nd September 1894 an instrument of partnership was executed on a stamp paper of Rs. 10, by Muthumani Pille in favor of Kesavaiya. Among other things, it is stated in the deed that each party should have 4 men of his to assist in carrying on the trade and that the names of these assistants should be entered in the account book of the firm. An account book was accordingly opened and on the opening page thereof the following entry was written :—

"Account book dated 22nd September 1894 of receipts and expenditure of the trade in "oranges, to be carried on jointly by Kesavaiya of Lashkarmohalla, Mysore City, Bangalore "Muthumani Pille, Chaboo Miya Saib, Hayath Khan Sahib, Mahomed Gows Saheb, Sheik "Adum Saheb, Mohadin Khan Saheb, Hayath Saheb, Mahomed Hussain *alias* Munni Saheb and "Ismail Saheb. A deed of partnership has been executed by Muthumani Pille in favor of "Kesavaiya on a stamp paper of Rs. 10, on the 22nd instant. The original deed is with Muthu-"mani Pille. What has been stated in that agreement deed is that Kesavaiya should contribute "Rs. 1,000 towards the capital, and Muthumani Pille 1,000. It has been settled so. Out "of the profit that remains after deducting contingencies, interest establishment charges, &c, "one anna share is to be given to God, 7½ annas share to Muthumani Pilli Company and 7½ "annas share to Kesavaiya Company. We have agreed to share thus both the loss and gain "and have attested our names hereunder."

Kesavaiya produced the above mentioned account book in a case O. S. No. 20 of 1895-96 on the file of the Sub-Judge, Mysore. The Sub-Judge (Mr. S. R. Subraya Iyer) having seen the aforesaid agreement written in the account book of the firm, thought that it ought to have been drawn up on a properly stamped paper as per article 32, schedule, of the Stamp Act, and levied from the petitioner Rs. 10 as stamp duty and a penalty of Rs. 100 being 10 times the duty required, total 110 rupees.

Thereupon, Kesavaiya applied to the Deputy Commissioner under section 36 of the Stamp Act, for a refund of the penalty which had been recovered from him, on the ground that a separate deed of partnership had been engrossed on a sufficiently stamped paper.

The Deputy Commissoner after perusing the papers furnished by the petitioner, Kesavaiya, passed the following order :—

"The deed which has been written on a stamp paper is one executed in your favor "by Muthumani Pille alone. By this, the partnership deed which has been written in the account "book and signed by all the partners concerned and which is subject to stamp duty, cannot be "exempted from such duty. You are therefore, hereby informed that there appears to be no reason "to refund any portion of the penalty amount which has been recovered from you by the Sub-"Judge's Court."

Kesavaiya has now applied to Government under section 42 of the Act. He argues firstly that the entry in the account book is not chargeable with any stamp duty and secondly that even if otherwise, it is subject to a stamp duty of only one rupee with a penalty of Rs. 10, under section 6 of the Stamp Act. He accordingly prays for the refund of the amount levied from him.

It may be observed that the deed of partnership has been properly stamped. It distinctly contemplated 2 sets of partners, *viz.*, (1) Kesavaiya and 4 of his men and (2) Muthumani Pille and 4 of his men. It goes on to provide that out of the net profits Kesavaiya and his men should get one-half and Muthumani Pille and his men, the other half. It also provides for the insertion in the accounts of the names of both Kesavaiya's men and Muthumani Pille's men. The entry in the account book made on the same date merely gives effect to the provisions contained in the instrument of partnership. The mere fact that unlike the said instrument, the entry bears the names and signatures of all the man concerned does not seem to convert the entry into a separate instrument of partnership. As at present advised Government are of opinion that the entry was not liable to any stamp duty. They desire, however, to have a ruling on the subject from the Chief Court. The point for the decision of the Chief Court is whether the entry made in the account book in question is liable to any, and what stamp duty. It is obvious that this is not one of the documents mentioned in section 6 which, therefore, has no application to the present case."

Letter No. 2224-74, dated 28th September 1893, from the Registrar of the Chief Court, forwarding copy of the following opinion of the Judges of the Chief Court:—

"The entry made in the account book does not add to or vary the terms of the instrument "of partnership. It was agreed between Kesavayia and Muthumani Pille that they were to "carry on the business with the assistance of eight persons. The entry contains the names of "the assistants and gives effect to the contract of partnership. It is not liable to stamp duty."

No. 3281-9—R. 1294, dated BANGALORE, 11TH NOVEMBER 1898.

ORDER THEREON—Ordered that the ruling of the Chief Court above quoted be communicated to the Deputy Commissioner of the Mysore district for information and guidance.

2. The stamp duty and penalty illegally levied by the Sub-Judge will be refunded.

C. SREENIVASIENGAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Deputy Commissioner, Mysore District,
The Superintendent of Stamps in Mysore.
The Deputy Commissioners of other Districts.

1898-99.

GOVERNMENT OF MYSORE

FINANCIAL

PROCEEDINGS

Dated 11*th November* 1898.

No. $\frac{3281\text{-}9}{\text{R. } 1294.}$

Directing the refund of the stamp duty and penalty illegally levied from one Kesavaiya by the Sub-Judge of Mysore on the first entry of an account book relating to a trade which he and certain other men agreed to carry on as partners, the entry being not a separate agreement as held by the Sub-Judge and the Dy. Commissioner.

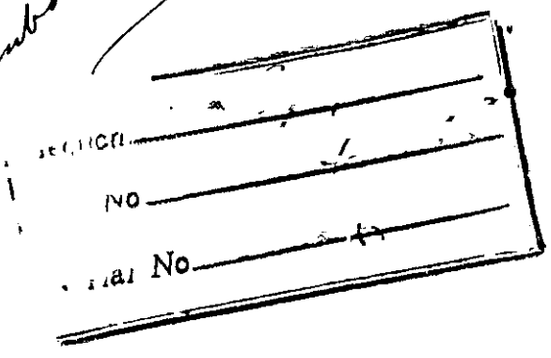
M. P. Bangalore. 16-11-98—200.

Rev. Cords
27 12.98

H.S.
5/1/99.

Sub
7/1/99

Submitted
10/1/99



REVENUE DEPARTMENT
Gl. No. 3956
C.27 .03
1898 No 670
OF WAN'S OFFICE

Gen. 31]

From

The Dy Commissioner
Mysore District

To

The Secretary to the Govt of Mysore
Revenue & General Departments

Dated 23

Despatched 24 December 1898.

Received

General No. 568
No.

Enclosure No. one

Government Proceedings
No 3281-9 dated 10th November/98
R 1294

ordering the refund of Rs 110/- being the amount of stamp duty and penalty levied by the Sub-Judge Mysore, from one Kesaviah residing in Lashkar Mohalla Mysore city, on the 1st entry of an account Book relating to the trade which the said Kesaviah and one Muthusamy Pillay agreed to carry on as partners.

Has

Has the honor to submit herewith for Sanction a refund bill for the amount referred to in the above with the District Treasury Officer's credit certificate duly attached hereto.

Deputy Commissioner's
Mysore District

Progs. of the Govt. of Mysore

Read:-

Docket no: 568 dated 24 December 1898. from the Dy: Commr: Mysore Dt., Submitting as per order conveyed in G.O. no: 3281-9/A1294 dated 10th November 1898 a refund bill on behalf of one Keshiah of Mysore, for Rs.110/ being the amount of Stamp duty and penalty levied from him by the Sub-Judge of Mysore on the 18th entry of an account book relating to the trade which the said Keshiah and one Muthusawmy Pillay agreed to carry on as partners.

Order thereon:-

The refund bill for Rs.110/- is sanctioned and forwarded to the Comptroller for audit.

12/1/99
for Secretary

To
The Dy: Commr: Mysore Dt.
" Comptroller with the bill.

ion
No
Serial No

N 4768 9 d/ 16/1/99
FC 5-11. 16